IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Akaram Khan Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.1423/2005

DATE OF ORDER :: November 21, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Ms. Sushma Dhara for Mr.Mahesh Bora, for the petitioner.

Mr. Ashok Upadhyaya, P.P.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order framing charge passed by the Special Judge, N.D.P.S. Cases, Hanumangarh (for short 'the trial court' hereinafter), whereby the charges against the present petitioner for the offence under section 8/21 and 8/22 of the Narcotics Drugs and Psychotropic Substances Act (for short 'the NDPS Act' hereinafter) have been framed.

I have heard learned counsel for the petitioner and the

Public Prosecutor.

It is contended by the learned counsel for the petitioner that no percentage of diacetylmorphine has been shown.

From the perusal of the charge, it appears that 10 gms. smack was recovered from the petitioner. On being examined by the Forensic Science Laboratory, the result of examination reveals that on microchemical examination, the sample contained in the packet marked (A) gave positive tests for the presence of diacetylmorphine (Heroin). Thus, there is a ground to presume that the petitioner committed an offence punishable under section 8/21 and 8/22 of the NDPS Act as the contraband seized from the petitioner gave positive test for the presence of diacetylmorphine.

Learned Public Prosecutor appearing for the State has supported the order impugned and contended that section 2(xvi) (e) of the N.D.P.S. Act provides that opium derivative means all preparations containing more than 0.2 percent of morphine **or containing any diacetylmorphine.** According to the learned Public Prosecutor, so far as diacetylmorphine is concerned, there is no requirement that it should contain more than 0.2 percent of morphine. To construe the offence of unlawful possession of

Heroin, there is no requirement of any percentage of morphine but it must contain diacetylmorphine. This controversy has been concluded by this Court in Akbar Khan vs. State of Rajasthan (S.B.Cr.Jail Appeal No.943/2003) decided on January 17, 2006.

In Yogesh Tyani & Ors. Vs. State, 2004 Cr.L.J. 3907, Delhi High Court has held that the use of percentage in relation to the heroin is only indicative of its purity/potency and not the weight. The percentage of purity of diacetylmorphine is immaterial for invoking the provisions of the Act because the Act does not prescribe any minimum percentage purity/potency of diacetylmorphine for its possession to be unlawful.

In this view of the matter, no case for interference in the order framing charge is made out.

The petition is, therefore, dismissed. Stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-